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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,449	10/15/2003	Susan Carol	1197.1101101	6863

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EXAMINER

PICKETT, JOHN G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/686,449	CAROL ET AL.	
	Examiner	Art Unit	
	Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 27 April 2006.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) 13-24 and 28-37 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-12 and 25-27 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/20/04</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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DETAILED ACTION

1. Applicant's election of Invention I, claims 1-12 and 25-27 in the reply filed on 27 April 2006 is acknowledged. The election was made **without traverse**. Claims 1-38 are pending in the application. Claims 13-24 and 28-38 are withdrawn from further consideration as being directed to a non-elected invention.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(n) because they do not include the appropriate drafting symbols: The transparent windows are an important feature of the invention. Therefore, transparent windows **16** and **114** should be shown with the appropriate drafting symbols for transparent material (see MPEP 608.02(IX)).

Further, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the text of claims 7-10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The title of the invention is not descriptive of the elected invention. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-6, 11, 12, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al (US 4,898,477; hereinafter Cox) in view of Kuge (US 2002/0141666 A1).

Claim 1: Cox discloses an apparatus **10** comprising a front panel **12** and a back panel **14** with edges **16/17** connected to form a cavity for retaining paint (Col. 4, lines 45-54). Cox anticipates the panels being opaque (Col. 7, lines 5-11) and merely lacks the transparent portion.

Kuge teaches transparent portions **12** on bag portions (see Figures 12 and 14) for observation of the bag contents while maintaining sufficient area for indicia (see for example paragraphs [0007] and [0004]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Cox with

transparent portions as taught by Kuge in order to enable observation of the bag contents while maintaining sufficient area for indicia.

Claims 2 and 3: Cox discloses a flexible pouch **10**.

Claims 4 and 5: Kuge teaches a transparent portion on the front part (see Figures 12 and 14) in conjunction with oblong opaque portions **2** (Kuge uses a nylon-LDPE laminate, which is the same material used by the applicant, see Kuge paragraph [0042]).

Claim 6: Cox discloses line **38** delineating a recommended opening.

Claim 11: Cox-Kuge, as applied to claim 1 above, discloses the claimed invention except for the specific amount of paint. It would have been an obvious matter of design choice to provide the paint of Cox-Kuge in the claimed volume, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claim 12: Both Cox and Kuge disclose oblong lateral cross-sections.

Claims 25 and 26: Cox-Kuge, as applied to claims 5 and 12, discloses the claimed invention.

5. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-Kuge as applied to claim 1 above, and further in view of Bane (US 5,366,087).

Cox-Kuge discloses the claimed invention except for the removable and resealable adhesive label with text.

Bane teaches the provision of a removable and resealable adhesive text label 10 for the purpose of detection of when a package has been opened yet allowing ready resealing of the package (see Col. 1, lines 23-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Cox-Kuge with a label as taught by Bane in order to detect when the package has been opened yet allow ready resealing of the package.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cox-Kuge as applied to claim 25 above, and further in view of Baker et al (US 3,903,345).

Cox teaches the package capable of retaining a variety of products (Col. 4, lines 45-54). Baker et al teaches the desirability to retain paint or stain within a product pouch (see Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide stain in the pouch of Cox-Kuge in order to present the stain to the consumer for viewing and purchase.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Greg Pickett
Examiner
14 July 2006